

**Statement of Rick McHugh
Senior Staff Attorney
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**Before the House Commerce Committee
In Support of the
Employment Application Fairness Act, HB 4366**

My name is Rick McHugh. I am a senior staff attorney with the National Employment Law Project (NELP). NELP is a national research and advocacy group that is focused upon employment issues of concern to low-wage and jobless workers. NELP promotes policies and programs that create good jobs, increase opportunity, and remove barriers to employment. NELP is a non-profit organization with offices in Washington, D.C., New York City, Oakland, California, and Ann Arbor, Michigan. I am based in Ann Arbor, and I've been a licensed attorney in Michigan since 1984 with experience in employment law and social insurance policy.

There are an estimated 65 million individuals with a criminal record in the United States. In 2011 in Michigan, there were 42,900 individuals in prison, 54,000 on probation, and 18,000 on parole. Many of those individuals return to their communities after serving their sentences or completing probation/parole and they then face the barrier of finding jobs despite having a criminal record. Given that reality, removing a barrier to employment is one way to reduce the challenges to finding work after individuals have satisfied their obligations under our criminal laws.

The proposed Employment Application Fairness Act would not prevent employers from using criminal background checks when hiring, instead the bill stops employers from using a criminal record to screen out all individuals with criminal histories at the initial application stage of hiring. In addition, the bill permits employers to use criminal records when hiring for jobs where such screening is required by federal or state law, or to conduct criminal background checks after the initial application stage. In short, while recognizing the legitimate needs of employers, the Employment Fairness Act gives those with criminal records greater opportunities to find employment by delaying the consideration of criminal records until an applicant has shown that he or she meets the basic requirements for a job.

The need for fairer treatment of job applicants with criminal records is evident. David Hickton, U.S. Attorney for the Western District of Pennsylvania, recently observed that “We have a choice. We can take steps when [these individuals] come out to give them a chance, or we can cycle them right back into the system.” Mr. Hickton’s remarks called attention to a growing policy responding to the reemployment crisis faced by individuals with criminal records known as “Ban the Box.” Under hiring practices screening out every individual with a criminal record used by many employers, individuals finishing their sentences cannot find jobs and risk becoming burdens on their families and communities. In our view, criminal records are properly considered only when relevant to the particular job and at a time in the selection process when a job candidate can offer an explanation.

The approach embodied in the bill limits a hiring practice that asks all job applicants to check a box if they have ever been convicted. If the box on the job application is checked, there is virtually no chance that this particular affected applicant will be hired. The bill would prohibit this sort of inquiry on initial job applications. Instead of taking this across-the-board approach, the Ban the Box approach requires that employers delay consideration of criminal records until a later point in the hiring process.

Ban the Box is recognized as a fair hiring policy that balances legitimate employer needs for criminal background information with an opportunity for an individual employee’s explanation of circumstances once the application has reached a level of serious consideration. Because Ban the Box offers a fair approach to this serious reemployment barrier for the many members of the public with criminal records, it has now been adopted by over 50 local governments (including Atlanta, Chicago, Philadelphia, and Tampa) and in 10 states (CA, CO, CT, HA, IL, MD, MA, MN, NM, RI). Here in Michigan, Detroit adopted an ordinance in 2010 and Saginaw County and Muskegon County have also done so. Many local Michigan communities are in the process of considering these policies. The state of Michigan should do so as well.

A growing number of employers have stopped asking applicants about criminal records in initial applications and instead wait until later in the hiring process. Target is the latest national example. Some employers do hire individuals with criminal records and have found that they can be productive employees if given an opportunity to work. Under Ban the Box hiring policies, the nature of the criminal conviction, an individual’s age when he or she committed a crime, and

the number of years that have passed since the conviction(s) can be taken into account when applicants have criminal records. Whenever past criminal convictions are not relevant to the performance of the requirements of the jobs under consideration these sorts of explanations can result in an individual getting a job, rather than a rejection.

We have a number of suggested improvements in the bill. As drafted, the bill simply prohibits screening all applicants for felony convictions. HB 4366 should be amended to cover past misdemeanor convictions, and we understand that an amendment will be offered to correct that omission. We support the bill with that change. In addition, we would recommend that the bill affirmatively state that an employer shall not inquire into or consider the prior criminal conviction of an applicant for employment, including conducting a criminal background check, until the applicant is determined by the employer to be otherwise qualified for employment. In addition, a qualified applicant should have an opportunity to explain his or her criminal history. This broader approach is followed in the better local and state Ban the Box laws around the country.

In conclusion, the Employment Application Fairness Act addresses a barrier to successful reentry of individuals with criminal records by giving jobseekers with criminal records an opportunity for fair consideration of their qualifications. The bill does not mandate hiring of individuals with criminal records or prevent employers from taking criminal records into consideration when hiring. Because these laws are common sense measures they are winning growing acceptance in states and localities across the country, and we urge Michigan to join these jurisdictions by adopting the Employment Application Fairness Act.

Mr. Chairman, that concludes my statement and I would be happy to answer any questions.

Respectfully submitted,

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